

# Formal Action # 14445

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE  
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

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STATE OF TENNESSEE,  
Plaintiff,

v.

FEDERATED DEPARTMENT STORES,  
INC., a Delaware corporation, and  
subsidiaries: FDS NATIONAL BANK,  
and FACS GROUP, INC.,  
Defendant.

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## COMPLAINT

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This civil action is brought in the name of the State of Tennessee, by and through John Knox Walkup, Attorney General and Reporter ("Attorney General"), pursuant to Tenn. Code Ann. §§ 47-18-108(a)(1) and 47-18-114, at the request of the Division of Consumer Affairs of the Tennessee Department of Commerce and Insurance (the "Division"), having reason to believe that the Defendant named herein has violated the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, et seq., and that this action is in the public interest.

### I. JURISDICTION AND VENUE

1. The jurisdiction of this Court is invoked pursuant to the provisions of Tenn. Code Ann. § 47-18-108.

Venue is proper in Davidson County, pursuant to the provisions of Tenn. Code Ann. § 47-18-108(a)(3), because it is a county in which Defendant has conducted business. (An Affidavit and Verification of Mark Williams, Director, Division of Consumer Affairs, Department of Commerce and Insurance, is attached hereto as Exhibit A.)

## **II. PARTIES**

2. Pursuant to Tenn. Code Ann. §§ 47-18-108(a)(1) and 47-18-114, this action is commenced in the name of the State of Tennessee, by John Knox Walkup, the Attorney General and Reporter, on behalf of and at the request of the Division of Consumer Affairs. (See Exhibit A.)

3. Upon information and belief, the Defendant Federated Department Stores, Inc. ("Federated" or "Defendant"), is a corporation organized under the laws of the State of Delaware whose principal place of business is located in Cincinnati, Ohio. Federated is a leading department store chain. It operates retail stores nationally under the names of The Bon, Inc., Bloomingdales, Inc., Burdines, Inc., Rich's Department Stores, Inc., Lazarus, Inc., the Rich's Department Stores, Inc. d/b/a Goldsmith's, Inc., Macy's East, Inc., Macy's West, Inc., and Sterns Department Stores, Inc. Other subsidiaries of Federated names as a Defendant in this lawsuit include: FACS Group, Inc. ("FACS"), an Ohio corporation which is Federated's centralized credit facility providing proprietary credit services to each of Federated's retail operating divisions; and FDS National Bank, a national banking association which issues the credit charge accounts for Federated Department Stores. These Federated parties will hereinafter be referred to collectively as "Federated" or "Defendant".

## **III. FACTUAL ALLEGATIONS**

Upon information and belief, the State alleges as follows:

4. Defendant Federated sells a variety of consumer goods, including clothing, linens, china, electronic goods and jewelry to consumers via a network of retail department stores. Consumers may purchase Federated's goods and services using credit products offered by Federated. The credit is typically open-end and includes finance charges. In most cases, the credit is accessed via a credit card issued by FDS National Bank.

5. Many of the consumers who purchased goods from Federated have been unable to pay their debts to creditors generally, including debts to Federated incurred through the use of Federated's credit cards, and have sought protection by filing Chapter 7 bankruptcy in the Federal Bankruptcy Court.

6. In an effort to continue collections on credit card debt incurred by consumers who have declared Chapter 7 bankruptcy, Federated has importuned such debtors to reaffirm their credit card debt that would otherwise be discharged through bankruptcy.

7. Upon obtaining the consumer's agreement to reaffirm his/her debt to Federated, Federated unlawfully

failed to file or ensure the filing of the reaffirmation agreement and/or unlawfully failed to obtain the approval of the Federal Bankruptcy Court prior to continuing to collect on the debt reaffirmed by the consumer.

8. After obtaining the reaffirmation agreements and failing to file such agreements with the Bankruptcy Court, Federated represented or continued to represent that the non-filed reaffirmation agreements were enforceable, for example under Federated's rights and remedies contained in the Federated's credit card agreement. Federated continued to demand payments from consumers in connection with reaffirmation agreements not filed with the Court, and in many instances charged these consumers interest, late fees, and penalties during the collection process, and/or caused inaccurate and damaging entries to be made on the credit reports of these consumers if they failed to pay the debt covered by these invalid reaffirmation agreements.

9. Federated undertook these practices despite the fact that the post-bankruptcy collection of its credit card debts under these circumstances was unlawful.

10. The State of Tennessee files this Complaint alleging facts solely relating to consumers whose reaffirmation agreements were not filed in the required Bankruptcy Court.

#### **IV. CAUSE OF ACTION**

11. The State re-alleges all preceding paragraphs of this Complaint, and incorporates them herein.

12. Defendant has violated the Tennessee Consumer Protection Act of 1977, §§ 47-18-101, et seq. by engaging in various unfair, misleading or deceptive acts or practices, including, but not limited to:

a) making deceptive, misleading, false or unfair statements to consumers in order to obtain consumers' agreements to reaffirm their debt to Federated in the course of the consumers' Chapter 7 bankruptcy proceedings;

b) misleading consumers regarding the consequences of a refusal to reaffirm debts during the course of their separate bankruptcies;

c) inducing consumers to reaffirm debts to Federated in violation of Bankruptcy Code requirements for reaffirmation agreements;

d) failing to file or failing to ensure the filing of, reaffirmation agreements with the Bankruptcy Court as required by law;

e) misrepresenting to debtors that they are legally responsible to repay debts that have been reaffirmed in an improper manner;

f) collecting or attempting to collect from consumers debts that have been discharged in Chapter 7 bankruptcy;

g) continuing to charge additional interest and finance charges on consumer debts that Federated knew or should have known it had no right to collect; and

h) falsely reporting to credit agencies that consumers have failed to pay lawful debts when in fact Federated knew or should have known that such debts had been discharged in Chapter 7 bankruptcy.

## **V. VIOLATIONS OF THE LAW**

13. Defendant's activities in obtaining non-filed reaffirmation agreements from consumers relating to debts incurred by purchasing goods or services from the Defendant in this State constitutes "trade" or "commerce" and the offering of or providing of "goods" as defined in Tenn. Code Ann. § 47-18-103(5) and (9).

14. Consumers who enter into non-filed reaffirmation agreements are "consumers" as defined in Tenn. Code Ann. § 47-18-103(2) which provides that :

"consumer" means any natural person who seeks or acquires by purchase, rent, lease, assignment, award by chance, or other disposition, any goods, services, or property, tangible or intangible, real, person or mixed, and any other article, commodity, or thing of value wherever situated...

15. All of the acts and practices engaged in and employed by the Defendant as alleged herein are "unfair or deceptive acts or practices affecting the conduct of any trade or commerce" in Tennessee, which are declared unlawful by Tenn. Code Ann. § 47-18-104(a).

16. Each and every violation alleged herein engaged in by the Defendant as recited above constitutes a separate violation of the Tennessee Consumer Protection Act and each is punishable by a civil penalty of not more than one thousand dollars (\$1,000.00) as provided by Tenn. Code Ann. § 47-18-108(b).

17. The Defendant's conduct violates the stated purpose of the Tennessee Consumer Protection Act stated at Tenn. Code Ann. § 47-18-102 which provides, in pertinent part:

The provisions of this part shall be liberally construed to promote the following practices:

(2) To protect consumers and legitimate business enterprises from those who engage in unfair or deceptive acts or practices in the conduct of any trade or commerce in part or wholly within this state;

(3) To encourage and promote the development of fair consumer practices;

(4) To declare and to provide for civil legal means for maintaining ethical standards of dealing between persons engaged in business and the consumer public to the end that good faith dealings between buyers and sellers at all levels of commerce be had in this state....

18. Further, the Defendant has violated Tenn. Code Ann. § 47-18-104(b)(27), which prohibits engaging in any act or practice which is deceptive to the consumer or any other person. The Defendant's conduct which violates this part includes, but is not limited to:

a) making deceptive, misleading, false or unfair statements to consumers in order to obtain consumers' agreements to reaffirm their debt to Federated in the course of the consumers' Chapter 7 bankruptcy proceedings;

b) misleading consumers regarding the consequences of a refusal to reaffirm debts during the course of their separate bankruptcies;

c) inducing consumers to reaffirm debts to Federated in violation of Bankruptcy Code requirements for reaffirmation agreements;

d) failing to file or failing to ensure the filing of, reaffirmation agreements with the Bankruptcy Court as required by law;

e) misrepresenting to debtors that they are legally responsible to repay debts that have been reaffirmed in an improper manner;

f) collecting or attempting to collect from consumers debts that have been discharged in bankruptcy;

g) continuing to charge additional interest and finance charges on consumer debts that Federated knew or should have known it had no right to collect; and

h) falsely reporting to credit agencies that consumers have failed to pay lawful debts when in fact Federated knew that such debts had been discharged in bankruptcy.

19. By representing that non-filed reaffirmation agreements are enforceable or valid, when such agreements are unlawful, the Defendant has, directly or indirectly, represented that a consumer transaction confers or involves rights, remedies or obligations that it does not have or involve or which are prohibited by law, in violation of Tenn. Code Ann. §47-18-104(b)(12).

20. As a result of the various violations of the Act as alleged herein, consumers and/or persons, the exact

number of whom is presently unknown to the State, may have and/or have suffered ascertainable losses of money.

### **PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, THE STATE OF TENNESSEE PRAYS:

(1) That this Complaint be filed without cost bond as provided by Tenn. Code Ann. §§ 20-13-101, 47-18-108 and 47-18-116.

(2) That process issue and be served upon Defendant pursuant to Tenn. Code Ann. § 20-2-201, requiring it to appear and answer this Complaint.

(3) That this Honorable Court adjudge and decree that Defendant has engaged in acts or practices in violation of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, et seq., as previously set forth.

(4) That this Court permanently enjoin and restrain the Defendant from, directly or indirectly, engaging in deceptive and unfair practices set forth herein and from violating the Tennessee Consumer Protection Act of 1977.

(5) That this Court make such orders or render such judgments as may be necessary to restore to any consumer or other person any ascertainable losses (including statutory interest) suffered by reasons of the alleged violations of the Tennessee Consumer Protection Act.

(6) That the Court adjudge and decree that the Defendant is liable to the State for the reasonable costs and expenses of the investigation and prosecution of the Defendant's actions, including attorneys' fees, as is provided by Tenn. Code Ann. § 47-18-108(b).

(7) That the Court adjudge and decree that the Defendant pay civil penalties of not more than One Thousand Dollars (\$1,000.00) per violation to the State as provided by Tenn. Code Ann. § 47-18-108(b).

(8) That all costs in this cause be taxed against Defendant.

(9) That this Court grant Plaintiff such other and further relief as this Court deems just and proper.

Respectfully submitted,

JOHN KNOX WALKUP  
Attorney General and Reporter  
B.P.R. No. 7776

CYNTHIA E. KINSER CARTER

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